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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

8 Kyle Herzog,) No. CV 04-3068-PHX-SMM (DKD)

9 Plaintiff,) **SHOW CAUSE ORDER**

10 vs.)

11 Maricopa County Board)

12 of Supervisors, et al.,)

13 Defendants.)

14 Plaintiff Kyle Herzog, formally confined in the Maricopa County Durango Jail in

15 Phoenix, Arizona, filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has

16 previously been granted leave to proceed *in forma pauperis*, and has been assessed the

17 statutory filing fee of \$150.00. See Order (Doc. # 4). Currently, the balance owed toward

18 the filing fee is \$150.00.

19 **A. Application to Proceed In Forma Pauperis & Filing Fee.**

20 Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner must pay the \$150.00 filing fee when

21 he files a civil action. If he is unable to pay the fee in full at that time, § 1915(b)(1)

22 authorizes the Court to collect the fee in incremental payments from the inmate's prison trust

23 account. In this instance, Plaintiff was granted leave to proceed *in forma pauperis* and

24 ordered to pay the fee in increments from his trust account, but he has since been released.

25 (Doc. # 5). Consequently, the inmate trust account from which the statute directs the fee to

26 be collected is no longer in existence.

27 The statute makes no other provision for collection of the fee. Therefore, Plaintiff

28 must pay the filing fee in full or show good cause in writing why he is unable to do so.

1 Accordingly, Plaintiff will be given 30 days from the date this Order is filed in which to pay
2 the \$150.00 fee or show good cause in writing why he is unable to do so. If Plaintiff chooses
3 to show good cause, he must explain in writing under oath why he is unable to pay. See also
4 28 U.S.C. § 1746 (the oath requirement may be satisfied when a person declares under
5 penalty of perjury that the submission is true and correct, and signs and dates the statement).
6 If Plaintiff chooses to demonstrate good cause, he must describe his current financial
7 condition in detail, including his sources of income, whether he is employed, and any
8 liabilities he may have.

9 **B. Warning of Possible Dismissal.**

10 Plaintiff is warned that failure to timely comply with every provision of this Order,
11 or any order entered in this matter, will result in dismissal of this action pursuant to Rule
12 41(b) of the Federal Rules of Civil Procedure. See Ferdik v. Bonzelet, 963 F.2d 1258 (9th
13 Cir. 1992) (recognizing that a district court may dismiss action for failure to comply with any
14 order of the court).

15 **IT IS THEREFORE ORDERED that:**

16 (1) Plaintiff shall have 30 days from the date this Order is entered to either pay the
17 \$150.00 filing fee or show good cause in writing why he is unable to do so; and

18 (2) The Clerk of Court is directed to enter a judgment of dismissal of this action
19 without prejudice and without further notice to Plaintiff if Plaintiff fails to pay the \$150.00
20 filing fee or file a response to this order showing good cause why he is unable to pay the fee.

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22 DATED this 31st day of October, 2005.

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26 Stephen M. McNamee
27 Chief United States District Judge
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